

United States District Court  
Central District of California

KARA BROWNLEE; JANUARY  
GESSERT,

Plaintiff,

v.

12745 MOORPARK LLC; THE MALIK  
CORPORATION; LORRAINE FISCHER;  
MIKE DEVANEY; and DOES 1-50,  
inclusive

Defendants.

Case No. 2:13-cv-9188-ODW(MANx)

**ORDER DENYING PLAINTIFFS'  
MOTION FOR LEAVE TO FILE  
FIRST SUPPLEMENTAL  
COMPLAINT [16]**

**I. INTRODUCTION**

Before the Court is Plaintiffs Kara Brownlee and January Gessert's Motion for Leave to File First Supplemental Complaint adding two claims pursuant to Federal Rules of Civil Procedure 15(d). (ECF No. 16.) Plaintiffs also request that in the event the Court treats the Motion as seeking leave to amend the Complaint the Court modify its Scheduling Order. (Mot. 3.) Under the current Scheduling Order, the deadline to amend pleadings was May 26, 2014. (Mot. 3; Opp'n 3.) For the reasons discussed below, the Court **DENIES** Plaintiffs' Motion. (ECF No. 16.)

**II. FACTUAL BACKGROUND**

On September 30, 2014, Brownlee submitted a rental application to become

1 roommates with Gessert in Defendants’ apartment building.<sup>1</sup> (Opp’n 1.) One week  
2 later, Defendants approved the application and Brownlee moved into the building.  
3 (Compl. ¶ 2.) Four days after moving in, Brownlee notified Defendants that she had  
4 an emotional support animal (“ESA”)—an American Staffordshire Terrier (commonly  
5 known as a “Pit Bull”)—that she used to treat her anxiety and depression. (Opp’n 1;  
6 Compl. ¶ 2.) The lawsuit arises from what allegedly transpired after Defendants  
7 learned of Brownlee’s ESA.

8 On November 12, 2013, Brownlee and Gessert filed the Complaint in state  
9 court. (ECF No. 1.) The following day Defendants were served. (*Id.*) On December  
10 13, 2013, Defendants removed the action to federal court under 28 U.S.C. § 1441(b).  
11 (*Id.*) Plaintiffs filed eight claims in support of the assertion that upon learning of  
12 Brownlee’s ESA Defendants “embarked on a calculated and egregious course of  
13 intimidation, retaliation, and discrimination.” (Compl. ¶ 3.)

14 Plaintiffs concede that the last date to amend pleadings was May 26, 2014, and  
15 the discovery cutoff was September 15, 2014. (Mot. 3; Opp’n 3.) On September 5,  
16 2014, Plaintiffs filed the instant Motion seeking leave to file a supplemental complaint  
17 adding two claims “arising out of conduct that occurred after [the] filing of the  
18 [Complaint].” (Mot. 3.)

19 The first claim arises from an email Fischer sent the morning of November 12,  
20 2013 (the day Plaintiffs filed suit). (Mot. Ex. 1.) In the email, Fischer informed  
21 Plaintiffs that Brownlee was being asked to permanently vacate the apartment  
22 building and not come back or park in the garage. (*Id.*) Should she return, the email  
23 said, the property managers would call the police and have her cited and removed for  
24 misdemeanor trespass. (*Id.*) Brownlee continued to reside with Gessert in  
25 Defendants’ building until May 2014. (Mot. 2.) Plaintiffs have not alleged that  
26 Defendants ever again said they would call, or did in fact call, the police.

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28 <sup>1</sup> The building is owned by Defendant 12745 Moorpark, LLC and managed by Defendant The Malik Corporation. Defendants Lorraine Fischer and Mike Devaney are the building’s resident managers.

1 The second claim arises from Fischer telling Brownlee in or around late January  
 2 2014 that the ESA was not allowed in the elevator. (Mot. 1-2.) Citing only this  
 3 encounter, Plaintiffs assert that Defendants’ “post-filing conduct” became  
 4 “unbearable” and caused “mental and emotional suffering” that forced Brownlee to  
 5 vacate the apartment on an unspecified date in May 2014, resulting in a constructive  
 6 eviction. (Mot. 2.) On another unspecified date later in May, Gessert vacated the  
 7 apartment because she could not pay the full rent without Brownlee or find a new  
 8 roommate. (*Id.*) Plaintiff asserts that Gessert was also constructively evicted. (*Id.*)

9 On September 17, 2014, Defendants filed a Motion for Summary Judgment.  
 10 (ECF No. 20.) The Court has not reached a decision on Defendants’ Motion.

### 11 III. LEGAL STANDARD

12 A supplemental pleading sets out events that happened after the filing of the  
 13 original pleading. Fed. R. Civ. P. 15(d). Conversely, an amended pleading is used to  
 14 allege facts in existence when the original pleading was filed; but title is not  
 15 determinative. *United States ex rel. Wulff v. CMA, Inc.*, 890 F.2d 1070, 1073 (9th Cir.  
 16 1989.) An erroneous characterization of a supplemental pleading as an amended  
 17 pleading is immaterial. *See United States ex rel. Atkins v. Reiten*, 313 F.2d 673, 674  
 18 (9th Cir. 1963.)

19 Supplemental pleadings may be permitted on motion and reasonable notice at  
 20 the court’s discretion—parties do not have a right to supplement. Fed. R. Civ. P.  
 21 15(d). The standard for deciding a motion to supplement under Rule 15(d) is the same  
 22 as deciding a motion to amend under Rule 15(a). *Id.*

23 The U.S. Supreme Court has held that federal courts should freely grant leave to  
 24 amend absent special circumstances, such as: (1) undue delay; (2) bad faith or dilatory  
 25 motive on the part of the movant; (3) repeated failure to cure deficiencies with  
 26 previous amendment; (4) prejudice to the opposing party; and (5) futility of  
 27 amendment. *Foman v. Davis*, 371 U.S. 178, 182 (1962).

1 A party requesting that the Court modify its scheduling order must show “good  
2 cause.” Fed. R. Civ. P. 16(b)(4). The “good cause” standard contemplates the  
3 diligence of the party seeking the amendment. Fed. R. Civ. P. 16 advisory  
4 committee’s notes (1983 amendment).

#### 5 IV. DISCUSSION

6 On September 5, 2014, Plaintiffs filed the instant Motion seeking leave to file a  
7 supplemental complaint adding two claims arising out of conduct that occurred after  
8 Plaintiffs filed their Complaint on November 12, 2013. (Mot. 3.) Ordinarily, the  
9 Court would give Plaintiffs the opportunity to supplement. However, there are special  
10 circumstances present that the Supreme Court has articulated would render denial  
11 more just.

##### 12 A. Undue Delay

13 The first circumstance that warrants denial of Plaintiff’s Motion is undue delay.  
14 *Foman*, 371 U.S. at 182. On November 12, 2013, Plaintiffs’ received the email from  
15 Fischer asking Brownlee to permanently leave the apartment and no longer park in the  
16 garage. (Mot. Ex. 1.) In or around late January 2014, Fischer told Brownlee that the  
17 ESA was not allowed in the elevator. (*Id.* at 1-2.) According to Plaintiffs, in May  
18 2014 Brownlee was constructively evicted from the apartment and sometime later that  
19 month Gessert was constructively evicted. (*Id.* at 2.) Plaintiffs admit that the last date  
20 to amend pleadings was May 26, 2014. (*Id.* at 3.)

21 Because Plaintiffs do not specify the dates of Defendants’ alleged misconduct  
22 in May, it is possible that the last constructive eviction occurred before the deadline to  
23 amend pleadings. Even assuming it occurred after, Plaintiffs waited approximately  
24 *four months* to file the instant Motion. (*Id.*) Plaintiffs have offered no reason for this  
25 delay and therefore the Court finds that there is no good cause.

##### 26 B. Bad Faith or Dilatory Motive

27 The second circumstance that warrants denial of Plaintiff’s Motion is bad faith  
28 or dilatory motive. *Foman*, 371 U.S. at 182. Plaintiffs filed the instant Motion ten

1 days before the September 15, 2014 discovery cutoff. (Opp'n 3.) Given the  
2 unexplained four-month delay, the Court finds the timing of Plaintiffs' Motion highly  
3 suspect and potentially indicative of a motive to limit Defendants' opportunity, even  
4 with a new Scheduling Order, to challenge Plaintiffs' new claims. The Court also  
5 recognizes the possibility that Plaintiffs want to delay the entire case by requiring the  
6 extension of all deadlines.

7 **C. Prejudice to Opposing Party**

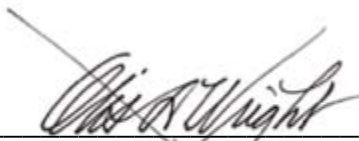
8 The third circumstance that warrants denial of Plaintiff's Motion is prejudice to  
9 Defendants. *Foman*, 371 U.S. at 182. The discovery cutoff was over two weeks ago  
10 and Defendants have filed a Motion for Summary Judgment. (Opp'n 3; ECF No. 20.)  
11 Were the Court to grant Plaintiffs leave to supplement or amend, the only way to  
12 avoid prejudicing Defendants would be to reopen discovery and delay the entire case,  
13 including the Court's ruling on Defendants' Motion. Without a showing of good  
14 cause, which Plaintiffs have not provided, the Court will not give Plaintiffs an  
15 opportunity to bring "new" claims that could have brought at least four months ago.

16 **V. CONCLUSION**

17 For the reasons discussed above, the Court **DENIES** Plaintiffs' leave to  
18 supplement or amend the Complaint. (ECF No. 16.)

19 **IT IS SO ORDERED.**

20  
21 October 3, 2014



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24 **OTIS D. WRIGHT, II**  
25 **UNITED STATES DISTRICT JUDGE**  
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